IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 946 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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REGIONAL DIRECTOR & 1 - Appellant(s)
Versus
DAHIBEN RAMJIBHAI LALJIBHAI - Defendant(s)

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Appearance :
MR HEMANT SHAH for Appellant(s) : 1 - 2.
MS ASHA H GUPTA for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and order dated 29.05.1981 passed by the Court of Employees' Insurance Court Ahmedabad in E.S.I. No. 59 of 1980.

2. The short facts of the case are that the deceased was an employee of the Bechardas Spinning & Weaving Mills Co. Ltd. On 28.09.1979 he had proceeded to go to the Mills to join his duties at 6.45 a.m. on cycle. When he came near Victoria Garden at about

6.50 a.m. four persons by name Govindbhai Trikamlal, Navinbhai and Jagdishbhai Trikamlala and Kishorbhai Khushalbhai assaulted on him with pipe and knife and caused injuries on his head and hands. He was immediately removed to the hospital and during treatment of the said injuries he expired on 03.10.1989. Therefore the widow of the deceased claimed dependency benefits from the original opponents under the Employee's State Insurance Act, 1948.

3. Mr. Shah, learned advocate for the appellants has relied upon the decision of the Apex Court in the case of ***Regional Director, E.S.I. Corporation & Anr Vs. Francis De Costs & Anr. reported in 1997(2) GLR Vol XXXVII (2) page 1336*** whereby it is held in para 8 as under:

> “The other words of limitation in sub-sec (8) of Sec. 2 are “in the course of his employment”. The dictionary meaning of “in the course of” is “during (in the course of time, as time goes by), while doing” (The concise Oxford Dictionary, New, Seventh Edition). The dictionary meaning indicates that the accident must take place within or during the period of employment. If the employee's work-shift begins at 4-30 p.m., any accident before that time will not be “in the course of his employment. If

> 'employment' begins from the moment the employee sets out from his house for the factory, then even if the employee stumbles and falls down at the doorstep of his house, the accident will have to be treated as to have taken place in the course of his employment. This interpretation leads to absurdity and has to be avoided.

4. Ms. Asha Gupta, learned advocate for the respondent has relied upon the decision of this Court in the case of ***Dudhiben Dharamshi and others Vs. New Jehangir Vakil Mills Ltd., Bhavnagar reported in 1977 (II) L.L.J. Page 194,*** whereby it is held as under:

> "worker standing 10 feet away from the entry gate five minutes before start of shift and fatally knocked down therefore the fatal accident arose in the course of employment in the facts and circumstances of the case the employer is liable as both the conditions "in the course of employment" and "arising" out of employment.

The same principle has been laid down in the decision of the apex court in the case of ***Saurashtra Salt MFG. Co. Vs. Bai Valu Raja and others reported in 1958 II L.L.J. Page 249.***

5. Heard both the parties I have gone though the judgement of the trial court in view of the ratio laid down by the Apex Court more particularly 3

conditions which are referred in para 29 is reproduced as under:

> "Although the facts of this case are quite dissimilar, the principles laid down in this case are instructive and should be borne in mind. In order to succeed, it was to be proved by the employee that (1) there was an accident, (2) the accident had a casual connection with the employment and (3) the accident must have been suffered in the course of employment. In the facts of this case, we are of the view that the employee was unable to prove that the accident had any casual connection with the work he was doing at the factory and in any event, it was not suffered in the course of employment."

In view of the above the accident has no casual connection with the employment. The issue raised in this appeal is squarely covered by the decision in the case of ***Regional Director, E.S.I. Corporation & Anr Vs. Francis De Costs & Anr. reported in 1997(2) GLR Vol XXXVII (2) page 1336*** and that view of the matter the decision of the authority is required to be reversed. Therefore the same is reversed. A part from that incident has no nexus with the employment and therefore the same cannot be said to have happened during the course of employment.

7. In the premises aforesaid the appeal is allowed. The impugned order is quashed and set aside. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*